

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: THURSDAY, MARCH 25, 2004
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:07 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Ms. Kathryn Inouye
Mr. Gerald DeMello

Ms. Lynn McCrory
Mr. Ted Yamamura

STAFF

Ms. Dede Mamiya, Land
Mr. Dan Quinn, State Parks
Mr. Carl Watanabe, Bureau of Conveyance
Mr. William Devick, DAR
Mr. Mike Buck, DOFAW

Mr. Sam Lemmo, OCCL
Mr. Steve Molman, DOBOR
Mr. Andrew Monden,
Engineering

OTHERS

Mr. Greg Kamm, D-7
Mr. Joe Farber, K-3

Ms. Ruth Tsujimura, K-1
Mr. Roland Durant, J-1

Mr. Doug Haigh, K-2
Mr. Kimokeo Kapahulehua,
K-3
Mr. William Waialeale, J-1

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1: Minutes of March 12, 2004

The Board made the following changes:

Page 3

“granted to HELCO. The revocable permit was effective January 1, 2004. With regards to Section 171-58, HRS DHHL . . .”

Page 3, second paragraph, last sentence

“She also made it known today’s decision does not limit the Department’s ability to issue additional water licenses in Keauhou aquifer.”

Page 3, third paragraph, second sentence

“Ms. Jackson went over the history of her colleague’s representation of Waimana Enterprises and Mr. Hee.”

Page 4, third paragraph, second sentence

“He asked the Board if his client can provide[d] documentation [tø] in this regard that the Department allow[s]his clients to purchase the area rather than be [giving] given an easement.”

Unanimously approved as amended (McCrory/Inouye).

Item E-1: Establishment of Curatorship Agreement for Portion of Former Lo’i Kalo, Makiki Valley State Recreation Area, Oahu.

Dan Quinn Administrator for State Parks requested a withdrawal of this item.

Motion to Withdraw

Unanimously approved to Withdraw (Inouye/McCrory).

Item D-7: Rescind Prior Board Approval of 8/10/90, Agenda Item F-14, and Issuance of Revocable Permit to Jurassic Kahili Ranch LLC, Pilaa, Kauai, TMK: 5-1-2:4 and 6.

Dede Mamiya Administrator for the Land Division made it known in 1990 the Land Board approved a set-aside to the Moloaa Forest Reserve to the Division of Forestry and Wildlife (DOFAW). Due to several constraints the set-aside has not been completed so staff is instead issuing a revocable permit to Jurassic Kahili Ranch LLC, which is the abutting landowner. The parcel in question is land locked and access will be through the applicant’s property. DOFAW noted they did not object to this request but asked staff to include certain conditions in the permit 1)the permittee would allow access through their

private property in order to access the unencumbered State lands and 2) No timberstands shall be removed. Ms. Mamiya recommended the Board rescind its prior action of 8/10/90, agenda item F-14 and authorize the issuance of a revocable permit to Jurassic Kahili Ranch LLC covering the subject area for pasture purposes and impose a \$500 fine for the encroachment upon public lands without government authorization.

Greg Kamm representing Jurassic Kahili Ranch LLC came forward to testify. Member McCrory asked Mr. Kamm if he would support an additional recommendation, which would, recognizes public access as a future goal. Mr. Kamm noted he would be in agreement with that additional recommendation. He went on to tell the Board his client has no objection to paying the fine but he wanted to note that the violation of cattle grazing onto State lands occurred with the previous private land owner. Mr. Kamm went on to say when they discovered the cattle grazing onto State land they took immediate action in the field to prevent cattle from grazing on State lands and applied for a Revocable Permit to make sure that they did not perpetuate a violation.

The Board amended the Recommendation Section by:

- 1) Adding a subparagraph C.3.f to read as follows:

“C.3.f. Permittee recognizes public access as a future goal and shall work with the Division of Forestry and Wildlife as they proceed towards that goal.”

- 2) Deleting paragraph D. in its entirety.

Unanimously approved as amended (McCrory/Inouye).

Item K-2: To Construct the Proposed Kapaa-Kealia Bike & Pedestrian Path Project which Involves an Existing Asphalt Paved Path in the Kapaa area; Improvements to an Existing Cane Haul Road Extending from Kapaa to Ahihi Point in the Kealia area; Providing Related Path Amenities such as a Comfort Station, and Parking Areas; Applicant: County of Kauai, Department of Public Works; Wailua, Kapaa, Kealia, and Anahola, Kauai, TMK: 4-7-003:001 and 4-7-007:029.

Sam Lemmo Administrator of the Office of Conservation of Coastal Lands conveyed the proposed project consists a bicycle, pedestrian and equestrian pathway approximately 4.3 miles long, with a 10-12 foot wide pathway. Mr. Lemmo notes approximately 1.49 miles of the pathway is located in the Conservation District. The applicant also proposes to make improvements to the existing path as well as provide comfort stations and parking areas. An Environmental Assessment was published in the September 23, 2003 issue of the Environmental Notice. The only real concern Mr. Lemmo had with the project was the potential for erosion damage as the path was located close to the shoreline in some areas. To address the erosion issue the County was asked to located the pathway

improvements as far mauka as possible to avoid potential erosion hazards. Mr. Lemmo recommended the Board approve CDUA-KA-3160 to construct the proposed Kapaa-Kealia Bike Path project.

Doug Haigh of the Department of Public Works, County of Kauai was present to answer any questions.

The Board amended the Recommendation Section by:

1) Amending condition 8) to read as follows:

“The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. In addition to dust control during construction, dust control measures shall be provided during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly;

2) Amending condition 14) to read as follows:

“... 4) archeological monitoring is needed in the sandl deposit areas; . . . “

3) Amending condition 15) to read as follows:

“If additional/undescribed construction, or landscape modifications near the streams or shorelines are developed during the design process; plans will be submitted to [~~your~~] the department for review[~~r~~];

Unanimously approved as submitted (McCrory/Inouye).

Item K-3: To Revitalize Koieie Fishpond for Educational, Cultural, Historical, and Recreational Purposes; Applicant: Ao Ao O Na Loko I a O Maui (Association of the Fishponds of Maui); In Offshore Waters, North Kihei, Maui, Adjacent to TMK’s (2) 3-9-001: Parcels 85, 87 and 147.

Mr. Lemmo made it known the location of the fishpond is adjacent to the Maui office of the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS). The fishpond has been extensively destroyed by storm waves and development. The applicant proposes to reconstruct and repair the fishponds submerged but deteriorating walls, which encloses an area of approximately three acres of submerged land. The proposed project aims at reconstructing and maintaining the fishpond for cultural and historic preservation and recreational purposes. Comments and concerns were received from various agencies to which the applicant addressed. Mr. Lemmo recommended the Board approve the application to reconstruct the Koieie Fishpond.

With regards to staff's recommendation 12) Member Inouye questioned the need for annual water quality monitoring beyond the testing done before and after the completion of the project. It was noted the Department of Health would be asking the applicant for water quality testing therefore the Board will not need to ask for water quality monitoring.

Joe Farber project consultant and Kimokeo Kapahulehua president of Ao Ao O Na Loko I a O Maui came forward to testify. Mr. Farber informed the Board he believed the restoration of the Koieie Fishpond would be completed in two years.

Mr. Kapahulehua gave the Board some background information on his organization. His organization was formed in 1996 with the intention of revitalizing the Koieie Fishpond. Their organization currently holds a memorandum of agreement with the HHHWNMS to provide the organization with office space. The organization works with school groups educating them with regards to the fishpond. Mr. Kapahulehua told the Board his organization has funds available to complete the water quality monitoring.

The Board amended the Recommendation Section by:

1) Amending condition 12) as follows

“That the applicant submits annual reports from the date of the Board of Land and Natural Resources approval to the Chairperson (or the OCCL) on the status of the project. ~~[These reports shall contain: water quality data (tide, wind direction, weather conditions, salinity, dissolved oxygen, temperature, turbidity) before, during, and after restoration. Data shall also include beach profiles and photo documentation before, during, and after restoration, and a general discussion of the fishponds impact on the existing environment;]~~ The report shall contain data concerning beach profiles and photo documentation before and during restoration, and for a period of five years after completion of restoration;

2) Amending condition 13)

“. . . 6) an archeological inventory shall be conducted if the proposed undertaking extends to the area to the north of the fishpond[-];

3) Amending condition 14)

“ If the fishpond wall is having impacts to the shoreline (erosion) and the applicant is proposing post-construction alterations, or sand accumulates in the fishpond basin, prior approval must be received from the OCCL, before any remedial action is taken;

4) Amending condition 15)

“The applicant shall [~~notified~~] notify and receive prior approval from the OCCL, if additional materials (rocks) are to be imported (to review the source location of the materials);

Unanimously approved as amended (Yamamura/Inouye).

Item K-1: Request to Extend the Processing Period for an Additional 30-days for Conservation District Use Application (CDUA) HA-3065 for the Keck Outrigger Telescope Project at Mauna Kea Science Reserve, District of Hamakua, Island of Hawaii, TMK: (3) 4-4-15: 9 & 12.

Mr. Lemmo reminded the Board this application is currently in a contested case mode. This is the seventh request made by the applicant for an extension. Mr. Lemmo recommended the Board approve this request to extend the processing period for CDUA HA-3065 and additional 30 days.

Ruth Tsujimura representing the applicant came forward to testify. The Board question Ms. Tsujimura if the 30-day extension was ample time. Ms. Tsujimura requested the Board amended its recommendation to include a 60-day time extension.

Member DeMello recused himself.

The Board amended the Recommendation Section as follows:

“That the Board of Land and Natural Resources approve this request to extend the processing period for CDUA HA-3065 an additional [~~30-days (until May 10, 2004)~~] 60-days (until June 9, 2004) to allow sufficient time to complete the contested case hearing process.”

Unanimously approved as amended by the remaining members (McCrory/Yamamura).

Item K-4: Alleged Unauthorized Construction of a Shoreline Structure by County of Kauai, Department of Public Works, Aliomanu, Kauai.

Mr. Lemmo communicated in June 2003, the Office of Conservation and Coastal Lands received a complaint that the County of Kauai was constructing a boulder revetment. Staff contacted the County and in turn the County sent a letter explaining why they did what they did. It was disclosed in the late 1960's or early 1970's a rock structure was built. Due to the damage caused by high waves periodically the rock wall needed to be repaired by reassembling the existing rocks. In any case Mr. Lemmo noted this is a violation. He recommended the Board impose a fine of \$2000 for the boulder structure to be paid within sixty (60) days of the date of the Board's action and that the County of Kauai shall either remove the structure or submit a completed Conservation District Use Application for the unpermitted boulder structure within sixty (60) days of the Board's action.

Unanimously approved as submitted (McCrory/Inouye).

Item J-1: Forfeiture of General Lease No. S-5383, Waialeale Boat Tours, Inc, a Hawaii Corporation, portion of Wailua River State Park, Wailua, Lihue (Puna), Kauai, Hawaii, TMK: 3-9-02: Wailua River.

Steve Molman Property Manager for the Division of Boating and Ocean Recreation pointed out the lessee was served a notice of default on September 29, 2003. The Notice offered the lessee a thirty-day cure period to correct the default. On October 25, 2003 the Department received a letter from Mr. Sonny Waialeale that stated they were presently refinancing their home and property to clear up any payments in arrears. On January 26, 2004, Mr. Waialeale sent another letter alleging he was a Kanaka Maoli and he would no longer honor his lease with the State. Mr. Molman recommended the Board authorize the cancellation of General Lease No. S-5383.

William Sonny Waialeale and Roland Durant came forward to testify. Mr. Waialeale confirmed with the Board that his lease was for TMK: 3-9-02. He then asked the Board if the referenced TMK included all land and water (including the Fern Grotto and State Park) notated in black on the map attached to staff's submittal. The Board noted the title of the submittal stated "portion of Wailua River State Park." Mr. Waialeale told the Board he accepted the lease because he did not know any better at that time. Today he questions the validity of the State lease. He believes the State lease is fraudulent as the use of the land is his inherent birthright. Mr. Waialeale read a letter written by Roland Durant to Governor Linda Lingle, which is attached in staff's submittal.

Roland Durant communicated why he believes the State does not own the land in question. He made reference to the Land Commission Award and stated the State is changing the identity of the subject land. Mr. Durant feels the 1923 Land Commission Award does not reference an earlier map to show how the boundaries were determined. He questions the accuracy of the map and believes the map is a fraud. Mr. Durant noted a boundary on the 1923 Land Commission Award map was lifted due to its inaccuracy therefore all other boundaries need to be questioned.

Member McCrory asked Mr. Waialeale if he has any intention of paying the State the back rent he owes. Mr. Waialeale informed the Board he has no intention of paying any back rent to the State and his intention is to sue the State.

The Board confirmed with Yvonne Izu of the Deputy Attorney General's office that the State leases with Mr. Waialeale is valid and the State can proceed with the recommendation listed in the submittal.

The Board clarified with Mr. Waialeale if they move forward with a decision today his operation will cease to exist. Mr. Waialeale agreed he understood what was going on and the repercussions that will result if the Board acts on this item today.

Unanimously approved as submitted (McCrory/Inouye).

Item C-1: Kipuka 21 Fencing and Interpretive Trail Construction, Upper Waiakea Forest Reserve, Hilo District, Island of Hawaii.

Michael Buck Administrator for the Division of Forestry and Wildlife informed the Board the division is planning to construct perimeter fencing and an interpretive trail within the Upper Waiakea Forest Reserve. The goal of this project are to 1) provide long-term protection to the natural resources within a kipuka situated near Milepost 21 on Saddle Road through perimeter fencing and 2) provide safe and convenient public access to a relatively unspoiled kipuka rainforest habitat. The total area of fencing enclosure is approximately 15 acres. As far as the interpretive trail the project will involve developing approximately $\frac{3}{4}$ mile interpretive trail with at least one viewing platform at the trailhead. Currently DOFAW has \$40,000 in funding for this project. A Draft Environmental Assessment for the Kipuka 21 Fencing and Interpretive Trail Project was published in the November 23, 2003 OEQC Environmental Notice. Mr. Buck recommended the Board grant approval to the Division of Forestry and Wildlife for the Kipuka 21 Fencing and Interpretive Trail Construction project as a permitted government use within the Conservation District consistent with the objectives of the Protective Subzone.

Unanimously approved as submitted (DeMello/Yamamura).

Item G-1: Request for Approval to Enter into a Contract for Professional Services to Conduct a Survey of the Operations, Procedures and Staffing of the Bureau of Conveyances.

Carl Watanabe Administrator for the Bureau of Conveyances went over the amount of increases in the number of recordings from July 1999 to February 2004. The amount of staffing remained the same. The Bureau tried to complete a study last year but the funds budgeted for this undertaking were insufficient for the bids. Funding appropriated by the legislature is \$150,000. A bid was received by Hoike Consulting, LLC for \$74,999.95. Mr. Watanabe recommended the Board authorize the Chairperson to enter into a contract with Hoike Consulting, LLC for professional services to conduct a survey of the operations, procedures and staffing of the Bureau of Conveyances.

Unanimously approved as submitted (McCrory/Inouye).

Item L-1: Approval for Award of Construction Contract – Job No. 86-OP-J1, Ka Iwi Scenic Shoreline, Phase 1, Increment 2 Improvements, Oahu, Hawaii.

Andrew Monden came forward and recommended approval of this item.

Member Inouye questioned how long the project was to take. Mr. Quinn noted the project should take about one (1) year.

Unanimously approved as submitted (Inouye/McCrory).

Item F-1: Request for Approval to Amend Six (6) Agreements with the Research Corporation of the University of Hawaii (RCUH).

Item F-2: Request for Approval to Amend/Extend Two Agreements with the University of Hawaii (UH).

Item F-3: Request for Approval to Enter Into a Contract with the University of Hawaii (UH).

Unanimously approved as submitted (McCrory/Yamamura).

Item D-9: Dispute of Rent under Revocable Permit No. S-6040, John K. and Junedale U. Hashimoto, Permittees, Hanalei, Kauai, TMK: (4) 5-3-7:05.

Motion to Defer

Unanimously approved to Defer (McCrory/Yamamura).

Item D-1: Sale of Lease at Public Auction for Intensive Agriculture Purposes, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-10:48.

Item D-2: Sale of Lease at Public Auction for Intensive Agriculture Purposes, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-10:26.

Item D-3: Amend Prior Board's Action of August 23, 20003, Agenda Item D-2, and March 28, 2003, Agenda Item D-8 by Indicating the Term and Beneficiary Parcel for the Term, Non-Exclusive Easement for Maintenance of Three Rock Groins on State Fast and Submerged Lands at Spreckelsville, Wailuku, Maui, TMK: (2) 3-8-002: Seaward of 025.

Item D-4: Amend Set Asides to Division of State Parks to Revise the Makai Boundaries to the Mean Low, Low Watermark, Resulting in the Inclusion of Adjacent Beach and Coastal Areas with in the State Parks Jurisdiction at Makena State Park, Honuaula, Makawao, Maui, TMK: 2-1-006 and Wainapanapa State Park, Hana, Maui, TMK: 1-3-005:009 and 1-3-006:009.

Item D-5: Rescind Land Board Approval of 6/13/2003, Item D-6: Issuance of Revocable Permit to Sharlene K. Mata dba Hawaii's Keepsakes, Hanapepe Town Lots, Waimea, Kauai, TMK: (4) 1-9-5:43.

Item D-6: Sale of Remnant to William A. Lydgate, por. Kapaa Homesteads, 2nd Series, Kapaa & Waipouli, Kawaihau, Kauai, TMK: (4) 4-4-4: por. 3.

**Item D-8: Amend Prior Board Action of April 12, 2002 (Agenda Item D-19)
Cancellation of Revocable Permit No. S-5012, and Set Aside to the
County of Hawaii for Recreational Purposes, Kawaihae, South
Kohala, Hawaii, TMK: (3) 6-1-03:10 & 14.**

Unanimously approved as submitted (Inouye/McCrory).

There being no further business, Chairperson Young adjourned the meeting at 10:39 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources